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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/827,140	04/19/2004	Lawrence C. Little	1430/103	2318
27071	7590	02/02/2006	EXAMINER	
LEE PATENT SERVICES 48 SUMMER STREET STONEHAM, MA 02180			BARROW, JAMES G	
			ART UNIT	PAPER NUMBER
			3749	
DATE MAILED: 02/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/827,140

Applicant(s)

LITTLE, LAWRENCE C.

Examiner

James G. Barrow

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 6-30 and 33-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 31 and 32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 6-30 and 33-37 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species 2-9, there being no allowable generic or linking claim see also item 2 below. Applicant timely traversed the restriction (election) requirement in the reply filed on 12/26/2005.
2. Applicant's election with traverse of species 1 in the reply filed on 12/26/2005 is acknowledged. The traversal is on the ground(s) that the restriction requirement is believed to be improper because the Examiner states, on page 2: "Currently, no claims are generic". Applicant asserts that this statement is incorrect, and further asserts that the restriction requirement must be withdrawn, because independent claims 19-21 and 31 are generic. This is not found persuasive because the Examiner is not required to point out the generic claims. Regarding Applicant's assertion that independent claims 19-21, 31, and 32 are generic claims, the Examiner agrees with Applicant that claim 31 is a generic claim, however disagrees with Applicant on claims 1-21 and 32 are generic claims. Regarding claim 19, in lines 8-9, claims an "attachment means for attaching the cover to the striker such that the safety stopper" which reads only on species three through nine which makes it not generic and not part of the elected first species. Claim 20 claims, in lines 4-5, a "the safety stopper when attached to the tool defines a clear path for movement of a trigger component of the tool", however none of the figures illustrate a species of stopper for use with a tool having a trigger and the specification does not support a the use of the invention on a tool with a trigger, therefor claim 20 is

Art Unit: 3749

not generic and does not read on any species. Regarding claim 21, line 8, "a safety stopper attached to the spring handle" which reads only on species three through nine which makes it not generic and not part of the elected first species. The argument that claims 22-30 are allowable if claim 21 is allowable is moot. While the Examiner agrees with Applicant that claim 32 reads on the first elected species, the Examiner disagrees with the Applicant that claim 32 is generic. Claim 32 claims, in line 7, claims "a sleeve" which the fourth, fifth, sixth, seventh, eighth, and the ninth species do not have.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "the safety stopper when attached to the tool defines a clear path for movement of a trigger component of the tool" (Claim 20, L: 4-5) must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

Art Unit: 3749

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Allowable Subject Matter

5. The indicated allowability of claims 1-31 is withdrawn in view of the newly discovered reference(s) to Webb (US 5,501,382) and C.T. Manz (3,239,057).

Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4, 31, and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Webb (5,501,382). Applicant has admitted a striker as prior art. Webb discloses a universal hand tool holder a sleeve 110 made of "leather" (C: 3, L: 32), means (224A, 224B) for attaching holder to a belt, and "Although the preferred embodiment tool holder 100 is designed to be relatively universal in its application, each of a set of holsters may be customized somewhat to better accommodate a particular tool" (C: 6,L: 8-11). However, Webb does not disclose the tool holder specifically used

Art Unit: 3749

for a welding torch striker. It is common knowledge in the prior art to size the tool holder to fit the tool in the same field of endeavor for the purpose of providing a tool holder to fit a specific tool. It would have been obvious to one of ordinary skill in the art at the time the invention was made to size and shape the universal tool holder of Webb in order to hold a welding torch striker. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to make the universal tool holder of Webb by "the sleeve is formed of a single sheet of material folded to produce a fold and first and second open edges, the first and second open edges attached by stitching" (claim 2, L: 1-3). One of ordinary skill in the art would have expected Applicant's invention to perform equally well since it is "relatively inexpensive to manufacture" (C: 3, L: 35) because "of its integral, one piece design" (C: 3, L: 36). Therefore, it would have been an obvious matter of design choice to modify Webb to obtain the invention as specified in claim 2. Furthermore, Applicant has not disclosed that "the sleeve is formed of a single sheet of material folded to produce a fold and first and second open edges, the first and second open edges attached by stitching" (claim 2, L: 1-3) provides an advantage, is used for a particular purpose, or solves a stated problem. Regarding claim 4 it is the Examiner's position that the bend at the proximal end of the striker protrudes beyond the proximal end of the sleeve.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Webb (5,501,382) as applied to claim 1 above, and further in view of C.T. Manz (3,239,057). Webb does not disclose a pouch attached to the sleeve. C.T. Manz teaches the use of a pouch integral with a larger pouch in the analogous art of welding equipment holders for

Art Unit: 3749

the purpose of holding short rod stubs. It would have been obvious to one of ordinary skill in the art at the time the invention was made to put a pouch on the universal tool holder of Webb in order to "to provide a novel stub holding pouch ... which can be easily and effectively used by the welder to deposit the short ends or stubs of welding rod" (C: 1, L: 21-24).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Stern (6,910,578), Garland (6,085,952 and 5,388,740), Tuthill (4,496,088), A. Inwood (3,516,585), G.V. Steffens (4,441,251), Nigh (D451,276), and Harker et al (433,229) disclose sleeves that hold tools. Cooper (4,595,136) and H.S. Grace (2,325,506) disclose welding accessory holders.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G. Barrow whose telephone number is (571) 272-4870. The examiner can normally be reached on M-F, 9:30 A.M.-6:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3749

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James Barrow

